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THE MARYLAND HOUSE OF DELEGATES  
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**HB 1424 - Public-Private Partnerships Oversight & Review Act**

Chairman Barve, Vice Chair Stein and Respected Colleagues,

Thank you for the opportunity to present today on my legislation HB 1424, which adds sensible oversight and changes to the state Public Private Partnership (P3) statute. This bill is similar to the bill the Committee heard last year, with two additional pieces strengthening the role of the General Assembly in the P3 review process.

To be clear, I represent a district in Montgomery County that is impacted by the Governor's plan to widen I-495 and I-270. And while I disagree with the project, this bill is not a response to that project. This bill is about ensuring oversight and predictability for the financial health of our state in all P3 agreements, not just the potential road project currently under consideration.

There are several components to this legislation:

**Require a Draft Environmental Impact Statement**

This is part of the DLS core recommendations in their letter of January 7, 2019 to the General Assembly. That letter makes it clear that for contracts going forward, no pre-solicitation should be put forward without a completed EIS.

As DLS said: **“the General Assembly should amend the P3 statute to prohibit the submission of a pre-solicitation report prior to the availability of a draft EIS for any project that would require development of an EIS.”**

Pre-solicitation reports should wait, because the associated EIS will include critical details such as cost, timeline, land needs, environmental mitigation, and other important information. We will never have perfect information, but waiting until the environmental review process is finished means we will at least have a segment by segment analysis of a project. This way, the General Assembly—and the Board of Public Works—can truly understand what it is we are buying and what we are giving up. In fact, this is much closer to the best practices for P3s that the Federal Highway Administration (FHWA) has issued. According to FHWA, one way to mitigate risks is “for the public sector to have the environmental process near completion before releasing a P3 solicitation.” Even the Purple Line (PL), the only other P3 project currently in the state, was done in such a manner. The pre-solicitation report and contract for the PL were not issued until after a completed EIS.

### **P3 Oversight Review Board & Legislative Review**

The bill also establishes a Public-Private Partnership Oversight Review Board consisting of members appointed by the Speaker of the House, President of the Senate, the Comptroller, the State Treasurer, and three members appointed by the Governor. For transportation projects over \$500 million, the Review Board will:

- Review all pre-solicitation reports (along with the Budget Committees);
- Review the projects and develop recommendations; and
- Provide a report to the Board of Public Works (BPW) and the Budget Committees.

After reviewing the Board's report, the BPW will make a decision to authorize any P3 designation.

Most importantly, this legislation provides the General Assembly up to one year to revisit the P3 designation during the next legislative session and, if necessary, pass legislation to nullify the P3 designation.

### **Independent Credit Rating Assessment**

The bill also requires an independent rating assessment survey be completed by an independent auditor or a credit rating agency for each contract under the P3 agreement before it can be approved by the BPW. The survey should include the following elements:

1. The credit strength of a private entity and private funding source;
2. The possible credit impact to state government;
3. The possible credit impact to a local government, which may be impacted by a state project;
4. Recommendations for provisions to be included in the P3 agreement for the project to maintain a minimum credit rating; and
5. Financial information on contractors or subcontractors providing services under the P3 agreement.

Particularly for projects with a significant cost, the law should require this type of analysis so that we as policy makers have the fullest amount of information before any agreement is approved.

Maryland's triple A bond rating is one of the most significant and important pieces of our fiscal health and anything that could jeopardize that should not be taken lightly. What better way to ensure that these types of large scale projects do not negatively impact that rating than to get an analysis from the entities that ultimately decide on the state's bond rating?

### **Non-compete Clause**

The legislation clarifies changes made by the legislature in the 2018 session to the non-compete clause section of the P3 law. Previously, the non-compete section was updated so that “state-funded transit projects” were not included. The bill removes the “state funded” caveat since it could cause a chilling effect on new transit, road, highway, or bridge projects that may rely on local funding or through the P3 program’s revenue sharing.

### **Transferring Ownership and Operation of P3 Back to the State**

HB 1424 specifies the procedure for transferring the ownership and operation of a P3 back to the state or another private entity. The bill makes it clear that the tolls must be assigned to the state or to the new private entity to cover the costs of operation and maintenance. Current law only requires that the P3 Agreement include provisions related to terms and conditions for returning the assets to the state.

### **Reimbursing the State for Advance Costs**

HB 1424 requires the P3 entity to reimburse the State for advance project costs, and pay a reasonable annual subsidy to local governments impacted by a P3 project, which can fund related local projects. The reimbursement and annual subsidy must be considered a “primary payment” included in the project pro forma – not dependent on the project’s profits. This provision is especially critical to the I-495 & I-270 project because of what was contained in the Presolicitation Report submitted on December 11, 2018:

*“If the developer’s assessment of the potential costs is less than the toll revenues forecast resulting in excess cash flow, the developer might offer the State of Maryland an upfront payment at the signing of the Agreement and/or a share of the excess revenues over the term of an Agreement.”*

That statement certainly meets the requirement to include the method and term for revenue-sharing. However, it does not meet the representation made by the Administration that the project will not cost the taxpayers. In fact, the BPW recently awarded a \$90 million consulting contract for the project and State has incurred up-front planning costs, however this makes it seem uncertain as to whether that money will be repaid.

Once again, this legislation is about oversight, good governance, and most importantly creating financial certainty for our state. It is not targeting one particular project, but rather adding additional prudence to a process that if used improperly can have major negative ramifications for decades to come. **I urge a favorable report and thank you for your consideration.**